IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1596 OF 1996

1. Sheila Ebrahim Botawala

2. Shameem Ebrahim Botawala

both of Bombay Indian Inhabitants, Trustees of Ebrahim Esuf Botawala residing at Pemino, 5 Altamount Road, Bombay-400 026. .... Petitioners

- Versus -

1. The State of Maharashtra

2. The Controller of Accommodation, 4th Floor, Annexe Building, Bombay-400 032.

3a. Shri Prakash J. Tiwari

3b. Smt. Sudamabai J. Tiwari

both Indian Inhabitant, residing at Room No.5, 4th Floor, 481, Botawala Building, Kalbadevi Road, Bombay-400 002. .... Respondents

Shri D.G. Aras i/b M/s. Aras & Co. for the Petitioners.

None for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
V.M. KANADE, JJ.

DATED: SEPTEMBER 19, 2005

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard the learned Advocate for the petitioners.

None present for the respondents.

2. The petitioners by the present petition seek

direction for delivery of vacant possession of the premises which are in occupation of the respondents, the possession of which was obtained by the respondent No.1 in exercise of the powers under the Bombay Land Requisition Act, 1948, hereinafter referred to as "the said Act" along with the rental amount due and payable to the petitioners.

3. Few facts relevant for the decision are that by order of requisition passed under the said Act passed on 25-6-1954 the premises comprising of room No.5 situated on the 4th floor of Botawala building, Kalbadevi, Mumbai were sought to be requisitioned for the purpose of occupation of the Government employees and by further order of 26-6-1954 the same were allotted to the original respondent No.3, namely Jaleshwar Tiwari. The original respondent No.3 retired from the Government service in the year 1986. A notice appeared in the daily newspaper by name Janmabhoomi on 10-12-1994 calling upon the land owners to make representation to the respondent No.2 for derequisitioning their premises, if they so desired. Accordingly, the petitioners filed an application, consequent to which the petitioners were informed on 5-1-1995 by the office of the Controller of Accommodation that a show cause notice had been issued to the allottee, namely the said Jaleshwar Tiwari. By Advocates notice dated 7-1-1995, the petitioners requested for copy of the notice stated to have been

issued to the allottee. However, the office of the Controller of Accommodation refused to furnish such copy and accordingly informed the petitioners under letter dated 1-2-1995. The Controller of Accommodation thereafter issued an order dated 3-8-1995 releasing the premises in question. The allottee challenged the said order before the Appellate Authority, without any success and the Appellate Authority by its order dated 14-12-1995 confirmed the order of release of the premises. The allottee, however, succeeded in obtaining extension for vacating the premises till 30-4-1996 pursuant to the order passed by the Chief Minister on 30-12-1995. The petitioners thereafter sought to pursue the matter with the office of the Controller of Accommodation to obtain the vacant possession of the premises consequent to the release order issued by the said office and confirmed by the Appellate Authority. However, the petitioners were informed that no action could be taken on account of the stay granted by the higher authorities and hence the present petition came to be filed.

4. Though the respondents have been served in the matter and they had put up their appearance before this Court on earlier occasions, they have chosen to remain absent at time of final hearing of the matter. They have also not filed any affidavit in reply. The facts stated in the petition, therefore, remain unchallenged.

5. It is well-settled position in law that the premises once taken over by the respondent-Government in exercise of powers under the said Act and if the purpose for which the possession of the premises was taken over ceases to exist, it is necessary for the respondents to release the premises and deliver the vacant possession thereof to the owner of the premises. In the case in hand, it is undisputed fact and it is also a matter of record that the original respondent No.3, for whose occupation the premises were allotted consequent to the requisition thereof, ceased to be the Government employee after 1986. It is a matter of record that necessary show cause notice was issued to the original respondent No.3 for vacating the premises consequent to his retirement, yet the original respondent No.3 did not vacate the same. It is also a matter of record that the order of release of the premises was issued in the year 1995 and duly confirmed by the Appellate Authority and yet the respondents have not delivered the vacant possession of the premises to the petitioners.

6. The Apex Court in **Maheshchandra Trikamji Gajjar v. State of Maharashtra and others,** reported in (2000) 3 SCC 295, has clearly held that once the allottee retires and he/she is required to vacate the premises and the premises thereafter if not required for the requisitioned purpose, the same are required to be

returned to the owner. The said ruling squarely apply to the facts of the case established by the petitioners in the matter in hand.

7. Though the respondents have not contested the proceedings, it is necessary to make reference to the Ordinance which was issued by the Government in the year 1996 and further amendment carried out to the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 giving the status of a tenant to the Government allottees who were in occupation of such premises on 7-12-1996. The question of giving even such benefit to the original respondent No.3 does not arise in the case in hand as undisputedly the original respondent No.3 retired from the Government service in the year 1986 and even expired prior to 7-12-1996. Being so, under no circumstances, he could have availed any benefit under the provisions of the said Rent Act which gives the status of a tenant to the Government allottees in occupation of the premises allotted in his favour and being in occupation thereof on 7-12-1996. Since on the said day i.e. 7-12-1976, neither the original allottee was in the Government service nor he was alive, his legal heirs had no right to occupy the said premises.

8. In the result, therefore, the petition succeeds. The respondents are directed to deliver the vacant and peaceful possession of the premises to the petitioners

within a period of eight weeks along with the interest at the rate of 10% per annum on the sum due and payable to the petitioners till the date of delivery of possession. The rule is made absolute accordingly with costs.

(V.M. Kanade, J.) **(R.M.S. Khandeparkar, J.)**